

William A. Earnhart, ASBA 9411099
RICHMOND & QUINN
360 "K" Street, Suite 200
Anchorage, Alaska 99501
Telephone: (907) 276-5727
Facsimile: (907) 276-2953
E-mail: wearnhart@richmondquinn.com
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

MATTHEW NIESSINK and)	
ROBERTA RASMUSSEN, husband and)	
wife,)	
)	
Plaintiffs,)	
)	
v.)	
)	
WAL-MART and WAL-MART STORES,)	
INC.,)	
)	
Defendant and)	Case No. 3:06-cv-00254 TMB
Third-Party)	
Plaintiff,)	(PROPOSED)
)	<u>WAL-MART'S THIRD-PARTY</u>
v.)	<u>COMPLAINT AGAINST DYNACRAFT</u>
)	
DYNACRAFT BSC, INC.,)	
)	
Third-Party)	
Defendant.)	

Defendant Wal-Mart Stores, Inc. (Wal-Mart) by and through counsel, Richmond & Quinn, hereby asserts a third-party complaint against Dynacraft BSC, Inc. (Dynacraft).

1. Third-party plaintiff Wal-Mart is a Delaware corporation whose principle place of business is in Arkansas.

2. Third-party plaintiff Wal-Mart is qualified in all respects to commence and maintain this third-party claim.

3. Third-party defendant Dynacraft, upon information and belief is a corporation with its headquarters in California.

4. Third-party defendant Dynacraft is an importer and exporter of bicycles.

5. Plaintiff Matthew Niessink alleges that on May 22, 2006, he was riding a bicycle purchased from Wal-Mart when the handle bars rolled forward, causing plaintiff to pitch forward and sustain injuries.

6. Third-party defendant Dynacraft imported and shipped the bicycle which alleged caused plaintiff's injury to third-party plaintiff Wal-Mart.

7. The bicycle which third-party defendant Dynacraft imported and shipped to third-party plaintiff Wal-Mart and which allegedly caused plaintiff's injuries was defectively designed and/or manufactured and was improperly inspected by third-party defendant Dynacraft prior to shipment to third-party plaintiff Wal-Mart.

(PROPOSED) WALMART'S THIRD-PARTY COMPLAINT AGAINST DYNACRAFT

Niessink & Rasmussen v. Wal-Mart Stores, Inc., CASE NO. 3:06-cv-00254 TMB
PAGE 2 OF 7

COUNT I NEGLIGENCE

8. Third-party plaintiff Wal-Mart realleges paragraphs 1 through 7 as though fully set forth herein.

9. Third-party defendant Dynacraft owed to third-party plaintiff Wal-Mart a duty to ensure that the bicycles it imported were properly inspected for defects prior to shipment to third-party plaintiff Wal-Mart.

10. To the extent that plaintiffs' claims have merit, third-party defendant Dynacraft acted negligently in importing a defective bicycle and in distributing that defective bicycle to third-party plaintiff Wal-Mart.

11. To the extent that planitiffs' claims have merit, third-party defendant Dynacraft acted negligently in failing to inspect the bicycle and insuring that it was safe prior to shipping the bicycle to third-party plaintiff Wal-Mart.

12. As a result of third-party defendant Dynacraft's negligence, third-party defendant Dynacraft is liable to third-party plaintiff Wal-Mart for all or part of plaintiff Matthew Niessink's claim against third-party plaintiff Wal-Mart.

(PROPOSED) WALMART'S THIRD-PARTY COMPLAINT AGAINST DYNACRAFT

Niessink & Rasmussen v. Wal-Mart Stores, Inc., CASE NO. 3:06-cv-00254 TMB
PAGE 3 OF 7

COUNT II STRICT PRODUCTS LIABILITY

13. Third-party plaintiff Wal-Mart realleges paragraphs 1 through 12 as though fully set forth herein.

14. Third-party defendant Dynacraft distributes bicycles to third-party plaintiff Wal-Mart expecting the bicycles will be sold to customers in the condition in which they are manufactured and sold, knowing or with reason to know that third-party plaintiff Wal-Mart relies upon third-party defendant Dynacraft to provide defect free bicycles.

15. At the time of the alleged accident, plaintiff used the third-party defendant Dynacraft bicycle as it was intended to be used but because the bicycle was defective and unreasonably dangerous, third-party defendant Dynacraft, to the extent plaintiffs' claims have merit, is strictly liable for any and all damages.

COUNT III BREACH OF WARRANTY

16. Third-party plaintiff Wal-Mart realleges paragraphs 1 through 15 as though fully set forth herein.

17. Third-party defendant Dynacraft claims that its bikes are manufactured to the toughest quality standards in the industry, using the best parts and production methods to ensure safety and dependability.

(PROPOSED) WALMART'S THIRD-PARTY COMPLAINT AGAINST DYNACRAFT

Niessink & Rasmussen v. Wal-Mart Stores, Inc., CASE NO. 3:06-cv-00254 TMB
PAGE 4 OF 7

18. Third-party defendant Dyancraft expressly warranted that the bicycle distributed to Wal-Mart and used by plaintiff Matthew Niessink would be safe and functional.

19. Third-party defendant Dynacraft was aware that Wal-Mart relied upon Dynacraft to provide a product fit for use as a safe bicycle, thereby impliedly warranting that the product would be suitable for Wal-Mart to sell to customers.

20. As a direct and proximate result of third-party defendant Dyanacraft's breach of express and implied warranties of merchantability and fitness for a particular purpose, and to the extent that plaintiffs' claims have merit, Wal-Mart suffered damages as set forth above, the full extent of which shall be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, third-party plaintiff Wal-Mart prays for relief from this court as follows:

1. For general damages in excess of \$100,000 with the exact amount to be proven at trial;
2. For costs, interests, and attorney's fees; and,
3. For such other relief as the Court deems proper.

(PROPOSED) WALMART'S THIRD-PARTY COMPLAINT AGAINST DYNACRAFT
Niessink & Rasmussen v. Wal-Mart Stores, Inc., CASE NO. 3:06-cv-00254 TMB
PAGE 5 OF 7

DATED this 9 day of March, 2007, Anchorage,
Alaska.

RICHMOND & QUINN
Attorneys for Defendant

By: /s/ William A. Earnhart
William A. Earnhart
RICHMOND & QUINN
360 "K" Street, Suite 200
Anchorage, Alaska 99501
Telephone: (907) 276-5727
Facsimile: (907) 276-2953
E-mail:
earnhart@richmondquinn.com
Alaska Bar No. 9411099

LAW OFFICES
RICHMOND & QUINN
A PROFESSIONAL CORPORATION
360 K STREET, SUITE 200
ANCHORAGE, ALASKA 99501-2038
(907) 276-5727
FAX (907) 276-2953

(PROPOSED) WALMART'S THIRD-PARTY COMPLAINT AGAINST DYNACRAFT
Niessink & Rasmussen v. Wal-Mart Stores, Inc., CASE NO. 3:06-cv-00254 TMB
PAGE 6 OF 7

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March
9, 2007, a copy of the
foregoing was served on the
following party by mail:

Richard L. Harren
851 E. Westpoint Dr., Ste. 202
Wasilla, Alaska 99654

/s/ William A. Earnhart

RICHMOND & QUINN

2245\007\pld\THIRD PARTY COMPLAINT

LAW OFFICES
RICHMOND & QUINN
A PROFESSIONAL CORPORATION
360 K STREET, SUITE 200
ANCHORAGE, ALASKA 99501-2038
(907) 276-5727
FAX (907) 276-2953

(PROPOSED) WALMART'S THIRD-PARTY COMPLAINT AGAINST DYNACRAFT

Niessink & Rasmussen v. Wal-Mart Stores, Inc., CASE NO. 3:06-cv-00254 TMB
PAGE 7 OF 7